# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of CODY WADE DAVIS, TYLER MICHAEL BEAN, AMANDA FAY BEAN, and AMBER ELAINE DAVIS, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

GARY BEAN,

Respondent-Appellant,

and

DONNA ELAINE DAVIS,

Respondent.

UNPUBLISHED
August 25, 2005

No. 258337
Macomb Circuit Court
Family Division
LC No. 95-041772-NA

Before: Zahra, P.J., and Gage and Murray, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor children[1] under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j). We affirm.

On appeal, respondent-appellant correctly asserts that he has a constitutional right to parent his children. A parent's right to care for his children is a significant liberty interest of which he cannot be deprived without due process of law. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). However, respondent-appellant's constitutional right ceased to exist when the trial court found that various statutory grounds for termination were established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355; 612 NW2d 407 (2000). Moreover, we

[1] Amber Elaine Davis is not a child of respondent-appellant but of respondent Donna Elaine Davis, who is not a party to this appeal.

conclude that the trial court did not clearly err by so finding. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The primary conditions of adjudication relating to respondent-appellant were his history of incarceration for drug-related charges, his use of the children's urine for drug tests, his alcohol use, his history of domestic violence, and his inability to provide for the children financially. The trial court was justified in concluding that respondent-appellant's problems with drug use and domestic violence had not been resolved at the time of the termination trial. Although respondent-appellant was required to provide random drug screens beginning in April 2003, he only began to provide them in December 2003 and then provided a positive screen and missed screens. Although respondent-appellant was recommended to follow up his therapy, which ended in July 2003, with NA and AA, he provided no proof of NA/AA attendance after June 2003. We are not persuaded that the trial court clearly erred in finding that respondent-appellant's substance abuse problem had not been rectified. *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000). The evidence also reflected that, as recently as December 2003, respondent-appellant threatened to kill the children's mother and was disorderly and under the influence of alcohol when police arrived. Finally, evidence that respondent-appellant's last proof of employment was in September 2003 indicated that he continued to lack the ability to support the children financially.

The trial court also did not clearly err by finding that there was no reasonable likelihood that these conditions would be rectified in the reasonable future. MCL 712A.19b(3)(c)(i). The evidence showed that the children were removed for identical reasons in 1995, and the parents received services for two years, yet the same problems caused a second removal in late 2002 and remained unresolved during the approximately eighteen-month pendency of the instant matter. Given the lengthy history of these problems and respondent-appellant's failure to successfully address them despite the services that were offered, the trial court did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be resolved in the reasonable future. *Id.*[2]

Respondent-appellant argues, however, that termination was not warranted because services directed toward reunification were not offered. In general, when a child is removed from the custody of the parents, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal by adopting a service plan. MCL 712A.18f(1), (2), (4). The reasonableness of services is relevant to the sufficiency of the evidence for termination of parental rights. See *In re Newman*, 189 Mich App 61, 66-69; 472 NW2d 38 (1991). In the instant case, respondent-appellant does not specify what additional services should have been offered. Petitioner-appellee offered parenting classes, counseling, and drug screens to address respondent-appellant's barriers to reunification. However, respondent-appellant largely failed to participate in drug screens. The counseling was to address both substance abuse and domestic

[2] The trial court did not specify conditions other than those existing at the time of adjudication as a basis for the termination of respondent-appellant's parental rights, and no other conditions appear in the record. We therefore conclude that MCL 712a.19b(3)(c)(ii) was not an appropriate basis for termination of respondent's parental rights.

violence. The record reflects that the foster care worker attempted to secure additional services addressing domestic violence, but was unable to do so. Especially considering that the parents previously received services for two years after the children came into care in 1995, and where the worker testified that there were no more services she could provide, we believe the trial court properly found that reasonable efforts were made to preserve the family.

Termination was also warranted under statutory subsections (g) and (j). Respondent-appellant failed to provide proper care and custody for the minor children by engaging in domestic violence, which the children reported, by alcohol use and repeated incarceration for drug charges, by requiring the children to provide urine for his drug screens, and by failing to adequately support the children financially. The same evidence that established that there was no reasonable likelihood that the conditions of adjudication would be rectified in the reasonable future equally supports the conclusion that respondent-appellant would be unable to provide proper care and custody for the children in the reasonable future. His failure to comply with the parent-agency agreement is also evidence of his inability to provide proper care and custody for the minor children. *In re JK, supra* at 214. Based upon the same reasoning, we find no clear error in the trial court's finding that there was a reasonable likelihood that the children would be harmed if returned to respondent-appellant. MCL 712A.19b(3)(j).

Finally, the trial court did not clearly err by finding that termination was not clearly contrary to the best interests of the children. MCL 712A.19b(5). The children all expressed that they did not want to visit with respondent-appellant or live with him. Respondent-appellant engaged in inappropriate behaviors at visits with the children, and visits were eventually suspended because of evidence that they were harmful to the children. At the time of the termination trial, the children were stable in foster care and doing well in school. The record contains no evidence suggesting that termination of respondent-appellant's parental rights would be clearly contrary to the best interests of the children.

Affirmed.

/s/ Brian K. Zahra
/s/ Hilda R. Gage
/s/ Christopher M. Murray